NGE SIEW NOON

v.

SITIAWAN CREDIT CORP. SDN. BHD. & ANOR

HIGH COURT MALAYA, IPOH
PEH SWEE CHIN J
[CIVIL SUIT NO. 24-365-87]
7 DECEMBER 1988

CIVIL PROCEDURE: *Intervener - Application for - Whether intervener had locus standi - Stay of execution - Whether Court had jurisdiction to grant stay - Essential (Protection of Depositors) Regulations 1986 - Powers thereof - Companies Act 1965 - Section 244 - Rules of the High Court 1980 - Order 47 r. 1, O. 14 r. 6(1)b, O. 45 r. 11 - Article 150 of the Federal Constitution.*

The plaintiff on obtaining judgment against the defendant initiated execution proceedings to realise the judgment sum.

Bank Negara, being the Central Bank applied to intervene and sought a stay of execution under the Essential (Protection of Depositors) Regulations 1986 to protect the interest of depositors and to ensure that investigations into the operation of the defendant would not be frustrated.

Both the plaintiff judgment creditor and the defendant argued that Bank Negara (the intervener) had no *locus standi* to intervene.

The questions before the Court were:

(1) Whether the intervener had *locus standi* to intervene in these execution proceedings.

(2) Whether the Court had jurisdiction to grant a stay of execution of the judgment obtained by the plaintiff against the defendant.

Held:

[1] The intervener had *locus standi* to intervene in the execution proceeding as it empowered by statute, namely, Essential (Protection of Depositors) Regulations 1986.

[2] The Court had the jurisdiction to grant a stay of execution as:

(i) a petition for winding up had been presented against the defendant and as a result, s. 244 of the Companies Act 1965 came into operation preventing any attachment, sequestration distress or execution and the Court can further be empowered under O. 47 r. 1, O. 14 r. 6(1)(b) of the Rules of the High Court and O. 45 r. 11 of Rules of the High Court to grant a stay of execution.

Case referred to:
Pegang Mining Co. Ltd. v. Choong Sam & Ors. [1969] 2 MLJ 52, 56

Legislation referred to:
Companies Act 1965, s. 244
Essential (Protection of Depositors) Regulations 1986 reg. 5.4, 5, 7, 9
Federal Constitution, art. 150
Rules of the High Court 1980, O. 14 r. 6(1)(b), O. 45 r. 11, O. 47 r. 1

For the intervener/applicant - R. Abraham; M/s. Shook Lin & Bok
For the judgment creditor - Ngeh Koo Ham; M/s. Nga Hock Cheh & Co.

JUDGMENT

Peh Swee Chin J:

The plaintiff obtained judgment in default on 20 May 1987 for a sum of RM45,000 with interest and costs against the defendant and caused to be issued a writ of seizure and sale.

The plaintiff then followed up with an application for and obtained an order prohibiting the defendant from transferring, charging, leasing or otherwise dealing with some 16 pieces of land owned by the defendant.

With considerable snowballing effect, some 30 other judgment creditors appeared to have filed their respective writs of seizure and sale by the time a summons for directions of sale of lands in question was filed in July 1987.

The above-named intervener applied to intervene in these execution proceedings and sought a stay of execution under reg. 7 of the Essential (Protection of Depositors) Regulations 1986 (hereafter the said Regulations) until the completion of investigation by the intervener into the affairs of the defendant.

Learned Counsel for the intervener submitted that his application was made because his client was an interested party. The intervener, he said, had commenced investigation under reg. 4 and reg. 5 into the defendant and found the defendant to have carried on the business without licences. I pause to add that the licences referred to were a licence to take deposits from depositors under Finance Companies Act 1969 and a licence to lend money under Moneylenders Ordinance 1951. He said further liabilities had exceeded assets and his client had already filed a petition for winding up of the defendant. The object was to ensure a rateable distribution of the assets or their proceeds among all depositors, and to ensure that the said investigation was not frustrated. His client was charged with the duty of protecting the depositors.

Learned Counsel for the defendant submitted that the intervener had no business to intervene as the intervener was not invited. The intervener had no *locus standi*. The said Regulation did not give the intervener power to stop the execution. He could not compel the rest of the depositors to come to Court. After the expenses of accountants and solicitors employed by the intervener were paid, there might be nothing left for the execution creditors.

Article 150 of the Federal Constitution made possible the birth of the Emergency (Essential Powers) Act 1979 and the said Regulations were made under the said Act.

Under the said Regulations, the Central Bank or Bank Negara Malaysia appears to have the optimum and omnibus powers to investigate and control anybody engaged in the business of deposit-taking defined in the said Regulations as acceptance of any money or deposit or loan by a borrower from more than 10 persons, etc.

Regulations 4 and 5 give power to investigate in diverse manners and among the things which the Bank Negara Malaysia can do are provided by reg. 9.

Regulations 4, 5 and 9 are set out below:

> 4. (1) The Central Bank may investigate into the affairs of any person it suspects or has reason to believe is a deposit-taker.

(2) The power to investigate into the affairs of any person referred to in para. (1) shall include the power to investigate into the affairs of:

(a) any person who is in whole or in part, or in any manner or to any extent, concerned with the control or the management of the affairs of the first-mentioned person;

(b) any person who owns any share or interest in the property of the first-mentioned person;

(c) any relative, employee or agent of the person;

(d) any relative, employee or agent of any of the persons mentioned in sub-para. (a), (b) or (c);

(e) any depositor with the person; or

(f) any corporation in which the person or any person referred to in sub-para. (a), (b), (c) or (d) has an interest in shares of that corporation.

5. (1) For the purpose of any investigation under reg. 4, the Central Bank shall have powers in relation to any person referred to in reg. 4 to:

(a) enter and search any office or place of business or residence, and inspect any books or other documents whatsoever, of the person;

(b) require the person to produce to an officer of the Central Bank or a public officer any accounts, books or other documents including any travel or other personal documents whatsoever under his custody or control;

(c) require the person to be examined by an officer of the Central Bank or a public officer on oath or affirmation, or by notice in writing requiring the person to appear before an officer of the Central Bank or a public officer for examination on oath or affirmation in relation to the affairs or business of the person; and

(d) in the course of investigation

(i) seize, take possession of, and retain for such time as it deems necessary, any object, article, material or thing, or any account, books or other documents including any travel or other personal documents whatsoever of or relating to the person; and

(ii) search the person, if anything referred to in sub-para. (i) is capable of being concealed upon the person, provided always that whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(2) A person in respect of whom a search or an examination is being carried out under para. (1) shall be legally bound to submit himself to such search and examination and shall, throughout the period of such search and examination, be deemed to be in the lawful custody of the person or persons carrying out such search or examination.

(3) In conducting any examinations under sub-para. (c) of para. (1), the officer conducting the examination may cause the proceedings of the examination to be recorded in writing.

(4) The record of an examination made pursuant to para. (3) shall be read to and signed by the person examined, and where the person examined refuses to sign the record, the officer conducting the examination shall endorse thereon under his hand the fact of such refusal and the reason therefor, if any, stated by the person examined.

(5) Any findings, investigating reports or other documents relating to an investigation under these Regulations, and a record of examination under para. (3), shall, notwithstanding any other written law or rule of law relating to evidence, be admissible in any proceedings under these Regulations or under any other law in any Court.

(6) The Central Bank may:

(a) grant permission to any person to have access to anything seized and taken possession of during the course of investigation;

or

(b) disclose or make available to any police or other public officer any findings, record of examination, investigation reports, or other documents relating to an investigation under these Regulations.

(7) A person answering any question by any officer pursuant to the exercise of any powers under this regulation shall be legally bound to answer such question and to state the truth and shall not refuse to answer any question on the ground that it tends to incriminate him, and any answer given by him, whether or not it tends to incriminate him, may be used in any criminal proceedings against him.

9 (1) Whether the Central Bank is satisfied that any person is a deposit-taker, it may do one or more of the following:

(a) require the deposit-taker to forthwith cease all or any transactions or activities relating to its business, and refund all monies paid by any depositor in such manner as the Central Bank may direct;

(b) assume control of and carry on the whole or any part of the business of the deposit-taker as the Central Bank deems fit, or appoint any person to do so on the Central Bank's behalf;

(c) apply to the High Court to appoint a receiver to manage the affairs and property of the deposit-taker and for such incidental or ancillary orders or directions in relation to such appointment as may, in the opinion of the Central Bank, be necessary or expedient;

(d) in the case of a corporation, present a petition to the High Court for the winding up of the corporation, and the Court shall accordingly have the power to make an order for the winding up of the corporation notwithstanding anything contained in the Companies Act 1965;

(e) in the case of co-operative society, require the Registrar-General of Co-operative Societies to make an order for the cancellation of the registration of the co-operative society, and the Registrar-General shall accordingly cancel the registration of the co-operative society and shall have the power to do so upon being so required notwithstanding anything contained in the Co-operative Societies Act 1984;

or

(f) in the case of a pawnbroker, direct any licensing officer appointed under sub-section (2) of s. 10 of the Pawnbrokers Act 1972 to cancel the licence granted under the Act to the pawn-broker, and such licensing officer shall accordingly cancel the licence and shall have the power to do so on being so directed notwithstanding anything contained in that Act.

(2) The powers of the Central Bank under para. (1) shall not be exercised in relation to a co-operative society unless the Central Bank is satisfied that the co-operative society is unable, or is likely to become unable, to meet its deposit liability to any extent.

(3) Pursuant to sub-para. (b) of para. (1):

(a) the Central Bank or any person appointed for the purpose by the Central Bank shall assume control and carry on the whole or any part of the business of the deposit-taker until such time as:

(i) the deposit liabilities of the deposit-taker have been repaid or the Central Bank is satisfied that suitable provision has been made for their repayment; or

(ii) in the opinion of the Central Bank it is no longer necessary or expedient to do so; and

(b) the deposit-taker or any person associated with the deposit-taker in the manner specified in para. (2) of reg. 4 shall:

(i) submit the business to the control of the Central Bank or the person appointed for the purpose by the Central Bank; and

(ii) provide the Central Bank or the person appointed for the purpose by the Central Bank all such facilities or assistance as may be reasonably required to carry on the whole or any part of the business.

Learned Counsel for the plaintiff submitted that Bank Negara Malaysia had no *locus standi* or could not so intervene. I did not think that learned Counsel's contention was right.

Lord Diplock in *Pegang Mining Co. Ltd. v. Choong Sam & Ors.* [1969] 2 MLJ 52, 56 in determining as to whether the applicant therein ought to be given leave to intervene in those proceedings, adopted the test in the following words:

> a better way of expressing the test is: will his right against or liabilities to any party to the action, in respect of the subject matter of the action, be directly affected by any order which may be made in the action?

Action was taken by the Government obviously to protect those who deposited their money with the defendant, and in a sense, an emergency situation had come into existence threatening "the economic life" of those depositors on account of the supervening insolvency of the defendant, which took the deposit of these depositors. One of the ways to protect them would be to give back all the depositors a percentage of the refund of their deposits rather than to leave them in the lurch with nothing to hope for.

The said Regulations were designed, *inter alia*, to create such an equitable situation. If the auction of the land went ahead at the behest of the plaintiff and some of the creditors, there being no other worthwhile asset for those so left in the lurch, Bank Negara Malaysia would obviously be frustrated in their duty and functions under the said Regulations, in other words, their rights against the defendant herein under the said Regulations would be directly affected by the order made on the summons for directions for sale in regard to the sale of the defendant's lands. Any contention to the contrary would, in my view, be otiose.

The Privy Council in *Pegang Mining Co. Ltd.* [1969] 2 MLJ 52, 56 confirmed the order of allowing the intervention through the instrumentality of O. 16 r. 11 of the repealed Rules of Supreme Court. The said O. 16 r. 11 would appear to be in *pari materia* with O. 15 r. 6 of our present Rules of the High Court.

The Bank Negara Malaysia therefore had good reasons to intervene and be heard, in other words also, it had the *locus standi*, the lack of which was complained of by plaintiff.

The Court next considered the question as to whether this Court had jurisdiction to grant to stay of execution of the judgment obtained by the plaintiff in this case, and then decided that it had more than ample jurisdiction to do so for the following reasons.

At the hearing before me, a petition for winding up had already been presented against the defendant (judgment debtor) so that s. 224 of the Companies Act 1965 came into operation and the order to stay granted was really declaratory of the effect of the said s. 224 which provides as follows:

> 224. any attachment, sequestration distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the Court shall be void.

The Companies Act 1965 is not the only statute that confers jurisdiction on the Court to stay execution of a judgment; another statute that comes readily to mind is the Bankruptcy Act 1967 in regard to a judgment against a natural person. There are conceivably other statutes with similar provisions.

Apart from statutes, Rules of the High Court also confer similar jurisdiction, thus e.g. the jurisdiction to grant a stay of execution pending appeal; under O. 47 r. 1, there is jurisdiction to grant a stay of execution of a money judgment when (a) there are special circumstances which render it inexpedient to enforce the judgment or (b) when the applicant is unable from any cause to pay money; under O. 14 r. 6(1)(b), on a O. 14 application for summary judgment, where the Court grants judgment to a plaintiff and it can also stay the execution of it pending trial of the defendant's counter-claim; and under O. 45 r. 11, the Court grants a stay of execution on the grounds of matters which have occurred since the date of judgment.

In granting the stay of execution in the instant case, the Court bore in mind also the clear differences between granting a stay of execution and granting a stay of proceedings (excluding proceeding of granting a stay of execution), the latter not being in question herein any discussion thereon for the time being will be superfluous.

Also found at [1989] 1 CLJ 223